



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Managing Standard Form Contracts: An Examined Perspective

Introduction

Standardized contracts with a lot of fine print terms and conditions that limit or even completely eliminate responsibility are known as standard form contracts. This presents a special chance for the large corporation to take advantage of the person's vulnerability by putting conditions on him that frequently resemble private legislation and may even go so far as to release the firm from any liability under the terms of the contract. The courts now have the task of combating abuse. It has been extremely difficult for the courts to support the less fortunate party.¹

A standard form contract is a take-it-or-leave-it agreement that forbids negotiation. It is frequently a contract signed by unequal parties to the negotiation. It's a particular kind of legally binding agreement wherein two parties agree to do something, with one party having all the bargaining power and using that authority to construct the contract predominantly in their favour. It is also known as a boilerplate contract or an adhesion contract at times.

The economic system fundamentally embraced mass production around the turn of the century. Productivity determined the manufacturer's profit margin, and it soon became apparent that the company lacked the time and resources to enter into independently negotiated contracts. The printed, mass-producible contract that could be used again provided the solution to the problem. As such, the mass-produced good was a logical extension and enhancement of the standard form contract. Business-to-consumer contracts in standard form play a crucial efficiency role in the widespread distribution of goods and services. By removing the need to negotiate all of the intricate elements of a contract for every sale or use of a service, these contracts have the potential to lower transaction costs.

Concerns Regarding the Standard Contract Form

- **Mistakenly failing to read clauses**

¹ *What are standard form contracts* (no date) *Fair Contracts*. Available at: <https://faircontracts.org/what-are-standard-form-contracts/>

The courts have consistently ruled that contracts are meant to be carried out and cannot be revoked unless it can be demonstrated that coercion, fraud, or deception were used to enter into the agreement. This is true even when contracts are executed in the traditional manner. Therefore, standard form contracts are often acceptable; however, only if a party enters into a contract fully understanding its terms and conditions will that party be able to hold the other party liable for negligence.

Customers hardly ever read standard-form contracts, especially if they are long and have tiny print. Some providers exacerbate the problem by overloading customers with information, leading to "information overload," which discourages reading even more. In lieu of making logical decisions, consumers are limiting their decision-making to a limited number of factors, stopping their research before they have all the information needed to make well-informed choices, and engaging in a process of satisficing. The issue of customers seldom reading standard-form contracts is made worse when it comes to online contracts. It makes more sense for customers to decide not to read a contract that is lengthier, more complex, and requires more time to complete. Reading might not be worth the benefit if the cost is greater than the contract's price.²

- **Inequitable bargaining power**

Standard form contracts that take advantage of an employee's status to benefit the employer have been consistently rejected by courts. Including terms and conditions that benefit the employers and compel the employees to accept them is a common objective in employment agreements between employers and employees.

Almost invariably, consumers are in a weaker position when negotiating. The typical customer interacts with a team of shrewd experts and lawyers, large, powerful organizations, and knowledgeable suppliers. Additionally, because they regularly buy the good or service, customers have more "skin in the game" than suppliers, who depend on the volume of these transactions to stay in business.

The court held in **Superintendence Company of India (P) Ltd v. Sh. Krishan Murgai**³ that because the employers' benefit, the employee agreements need to be carefully reviewed. Employees are then left with very little bargaining power because they are given a standard form contract and are free to accept or reject it.

² Shirley Levy, S. (2023) *Fixing Standard-Form Contracts*, <https://heinonline.org/>. Available at: <https://heinonline.org/HOL/P?h=hein.journals%2Fucinlr91&i=796>

³ 1980 AIR 1717, 1980 SCR (3) 1278

The Standard Form of Contract provides the weaker party with protections, including the ability to call attention to any inappropriate terms in the agreement. These contract clauses are those that violate the law or are in opposition to the objectives of the agreement. This is precisely what **Lilly White v. Mannu-Swami**⁴ explains. In this instance, the court found the laundry acceptance receipt's clause that stated that only 15% of the fabric's market value would be reimbursed in the event of a loss or demolition to be unreasonable and upheld it as being against the community's overall interests.

- **Irrational language or unconscionable behavior**

Courts have refrained from intervening in cases where the parties were judged to have equal bargaining power. In **M Siddalingappa v. T Nataraj**⁵, the legality of the clauses printed on the back of a laundry receipt, which declared that the company is not responsible for the loss of the clothing given to them to be laundered, was disputed. As the laundry company is a bailee, the Honorable court decided that it is their basic responsibility to protect the items that have been temporarily delivered to them.

Remedies for Standard Form of Contract Exploitation

- **Due notification**

The party writing the contract is responsible for properly informing the offeree of the stated terms and conditions. Otherwise, these phrases do not bind the acceptor. The person supplying the document is responsible for adequately informing the offeree of the printed terms and conditions. If this is not done, the acceptor will be released from the terms.

This theory was advanced in the case of **Henderson v. Stevenson**⁶. In this case, the claimant was entitled to compensation for his misplaced luggage, and the airline had a provision on the back of the ticket exempting them from liability in the event of such loss without providing any instructions to check the item. Lord Denning made it abundantly clear in **Thornton V. Shoe Lan Parking Ltd**⁷. that it is the duty of the party that relies on the contract clause for its benefit to make the terms and conditions of the contract clear to other parties.

When entering into a contract, not later, a party must be made aware of the exemption clauses. In other words, notice must be given before to or at the time of signing a contract. Any provision that is understood after the contract is signed will not be considered accepted.

⁴ AIR 1966 Mad 13, (1965) 1 MLJ 7

⁵ AIR 1970 MYS 154

⁶ 1875 32 LT 709 (HL)

⁷ 1971 1 ALL ER 686 (CA)

- **Notice Period**

Any document introduced must be of a type that would reasonably lead a person to believe that it contains the terms controlling the contract, and it must be introduced at the time the contract is formed or before. **Marlborough Court Ltd. v. Olley**⁸. In this case, Mrs. Olley paid for and made a reservation for a room at the defendant's hotel. The hotel staff's negligence resulted in the removal of their possessions from the room. They filed a lawsuit against the accused, claiming that the notice that was in their room released them from responsibility. The court of appeal held that Olley could not have received the notice until after the contract was made, and as a result, the defendant was held accountable for the plaintiff's loss.

- **Reasonable terms and conditions**

All parties involved must be made aware of the terms and conditions of the contract before it is signed. By giving a fair amount of notice regarding the terms and conditions, this can be achieved. Parallel to this, the terms and conditions of the contract must make sense and cannot be incorrect. Even though a term is written on the back of a bill or receipt, or even if the parties have agreed to it verbally or in writing, it will not be enforceable if it is found to be unreasonable or against public policy. According to one of the terms in the Corporation's service rules, an employee's employment could be terminated for any reason, as was the case in **Central Inland Water Transport Corporation Ltd. v. Brojo Nath**⁹. In accordance with the Supreme Court's interpretation of the pertinent Service Rule, it is against public policy and a violation of Article 14 as well as the tenets of Articles 39(a) and 41 of the Indian Constitution for the Government Corporation to be able to terminate the services of its permanent employees by giving notice or accepting payment in lieu of notice.

- **The Fundamental Breach theory**

This is an additional tactic employed to protect the less powerful party in an unequal bargaining position from the terms of the contract. A party cannot escape responsibility when they materially violate the terms of the agreement. Contracting parties are presumed to have no intention of interpreting an exemption clause—even one that expressly releases parties from liability—in a way that would restrict or absolve them of their obligation to perform the contract at all, to release them from liability when they are not performing the contract but are

⁸ (1949) 1 All ER 127 (CA)

⁹ 1986 AIR 1571

instead departing from it, or to release them from liability in the event that one or more of the contract's essential obligations are broken.

In **Alexander v. Railway Executive**¹⁰, the court observed that guaranteeing the safe custody of the items upon luggage deposit is the railway parcel office's main objective. Consequently, clauses that release the party in the event that the goods are delivered in error will not stand up. This basic term, which is more basic, is what makes the contract work as a whole when it is violated.

Report of Law Commission of India

In its 103rd Report, the Law Commission suggested amending the Indian Contract Act of 1872 and adding chapter IV A with a single section 67A that would combine the benefits of Section 2.302 of the US Uniform Commercial Code and the English Unfair Terms Act. The Indian Law Commission once again expounded upon the provisions of the Specific Relief Act, 1963, which prohibits the enforcement of contracts containing unfairness or hardship, and the Indian Contract Act, 1872, which govern contracts that are voidable. Its 199th Report on Unfair (Procedural and Substantive) Terms in Contract (2006) addressed this topic. In its 199 Report, the Law Commission recommended that the clauses of these two statutes should not be amended or disturbed in any manner.

Conclusion

Many human endeavors these days are carried out in standardized environments. They now act as a means by which influential groups attempt to impose on the populace the conditions on which they will do business. The party with less negotiating power will receive a "take it or leave it" offer from the stronger party. Even though these agreements are more like bylaws than formal contracts, the members' contract is still contained in this set of rules.

The Law Commission of India's 199th Report on Unfair (Procedural and Substantive) Terms in Contract includes recommendations that should be implemented as soon as feasible by the Central Government. It is therefore essential that special procedures be developed in order to prevent the misuse of contract freedom with regard to these "standard form contracts," given the seriousness of the issue these unfair and unreasonable terms present.

¹⁰ [1865] 6 B & S 340